

Dismissed and Memorandum Opinion filed September 20, 2011.



In The

**Fourteenth Court of Appeals**

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NO. 14-11-00536-CV

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**IN THE INTEREST OF K.A.P., Appellant**

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**On Appeal from the 246th District Court  
Harris County, Texas  
Trial Court Cause No. 2011-11924**

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**M E M O R A N D U M    O P I N I O N**

This is an attempted appeal of an order in a suit affecting the parent-child relationship signed April 5, 2011. The petitioner, Susan Simpson, filed a suit to obtain custody of the child, K.A.P. because the parents of the child are incarcerated. Appellant, Patricia Shaw, is the child's grandmother and was not part of the original suit. After the order was entered, Shaw attempted to intervene by filing a motion for new trial, and is attempting to appeal the denial of the motion for new trial.

A remedy by appeal is available only to parties of record. *Gunn v. Cavanaugh*, 391 S.W.2d 723 (Tex. 1965). In this case, appellant never became a party of record. She attempted to intervene by filing a motion for new trial, but the trial court denied the

motion and did not set aside its judgment. Where final judgment has been rendered, a plea in intervention comes too late and may not be considered unless and until the trial court first sets aside its final judgment. *Citizens State Bank of Sealy v. Caney Investments*, 746 S.W.2d 477 (Tex. 1988). Because appellant was not a party to the judgment, nor an intervening party after judgment, this court has no jurisdiction over her appeal. *See Central Mut. Ins. Co. v. Dunker*, 799 S.W.2d 334, 336 (Tex. App.—Houston [14th Dist.] 1990, writ denied).

Section 102.004 of the Texas Family Code provides that a grandparent may intervene in a pending suit affecting the parent-child relationship, or, under certain circumstances, bring an original suit affecting the parent-child relationship. Tex. Fam. Code Ann. § 102.004. Section 102.004 permits a grandparent, or another relative of the child related within the third degree by consanguinity, to file an original suit requesting managing conservatorship if there is satisfactory proof to the court that “(1) the order requested is necessary because the child’s present circumstances would significantly impair the child’s physical health or emotional development; or (2) both parents, the surviving parent, or the managing conservator or custodian either filed the petition or consented to the suit.” *Id.* § 102.004(a). Therefore, appellant’s remedy lies in either intervening after the judgment is set aside, or in filing an original suit.

On August 26, 2011, notification was transmitted to the parties of this court’s intention to dismiss the appeal for want of jurisdiction unless appellant filed a response demonstrating grounds for continuing the appeal on or before September 8, 2011. *See* Tex. R. App. P. 42.3(a). Appellant’s response fails to demonstrate that this court has jurisdiction over the appeal.

Accordingly, the appeal is dismissed.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Anderson and Christopher.